IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

THURSDAY, THE 29TH MARCH 2007 / 8TH CHAITHRA 1929

WP(C).No. 9200 of 2007(T)

PETITIONERS:
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1. A.N.THAMBY, BABU NIVAS,
PAROLICKAL BHAGAM, ATHIRAMPUZHA POST,
KOTTAYAM DISTRICT.

2. N.BABU, BABU NIVAS,
-DO- -DO-

BY ADV. SRI.SANTHEEP ANKARATH

RESPONDENTS:

INDIAN OVERSEAS BANK,
REPRESENTED BY ITS CHIEF MANAGER/AUTHORISED
OFFICER, KOTTAYAM- 686 001.

BY ADV. SRI.P.B.SURESH KUMAR, SC,I.O.BANK

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 29/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.BALAKRISHNAN NAIR, J.

W.P.(C).No.9700 of 2007-T

Dated this the 29th day of March, 2007

JUDGMENT

The petitioners are in default to the respondent bank in relation to two loans, one of them is a housing loan and the second is a cash credit facility provided to the business run by them. Now, it is common case that the petitioners have stopped their business. The bank has issued Ext.P1 notice under Sec. 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and soon thereafter the second petitioner has been served with Ext.P3 notice threatening to publish his photographs in newspapers. So, the petitioners submitted Ext.P4 representation stating that on receipt of notice under Section 13 (2) of the above said Act they have already paid Rs.3 lakhs. They also pray for re-scheduling the loan, to enable them to clear the same.

2. I heard the learned Standing Counsel for the respondent also. The learned counsel submitted that some facility can be provided for closing the housing loan. But, the cash credit loan account has to be closed without delay as the petitioners have already stopped their business.

3. I think the publication of the photographs of the petitioner for simple default of payment of one or two instalments of loan accounts is in bad faith. India is a land of Dharidranarayanas and mere failure to pay the amounts in one or two loan accounts cannot be taken as a ground to insult

and humiliate the constituents by the bank. Of course, if the party concerned is a habitual defaulter and is trying to defraud the bank, it may be necessary to publish his photographs to alert the public as well as the other banks. But, there is no such case against the petitioners. The learned counsel brought to my notice the decisions of some of the other High Courts concerning this point. It is stated that they have upheld the decisions of the banks concerned to publish the photographs. I am not expressing any final opinion on them. But, I express the view that the mere default to pay some of the instalments to a financial institution could not be visited with such humiliating actions from the part of the bank. Since what is under challenge is only a notice under 13 (2) Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, this Court is not justified in interfering with the same. The petitioners may file their objections. Only after passing a speaking order under Sec.13 (3) (a) of the above-said Act, further proceedings will be initiated against them. If, further proceedings are initiated against them, they have remedies under the provisions of the Act. But, the bank shall consider extending the benefit of O.T.S scheme to enable the bank to close the loan account by waiving a portion of interest, if the same is permissible in accordance with the provisions of the Act. The petitioners may file a representation claiming appropriate reliefs in this regard. In that event, the competent authority of the bank shall consider and pass appropriate orders on it.

The Writ Petition is disposed of as above.

K.BALAKRISHNAN NAIR, JUDGE.

MS